

Decision 03-09-059 September 18, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dr. Augusto Baronio Martins,

Complainant,

vs.

Cingular Wireless (formerly known as Pacific Bell
Wireless),

Defendant.

Case 01-06-040
(Filed June 19, 2001)

Dr. Augusto Baronio Martins, for himself, Complainant.
Sarah Leeper, Attorney at Law, for Defendant.

ORDER DENYING RELIEF

By way of background we quote from our decision granting rehearing in this matter. (Decision (D.) 02-08-035.) “Dr. Augusto Baronio Martins (Applicant) alleged in his complaint (ECP Case (C.) 01-06-040) dated June 19, 2001, that his wireless telephone service, Cingular One,¹ was wrongfully disconnected for nonpayment of an April 1999 bill. According to Applicant, this bill was not sent

¹ Cingular One is a joint venture of SBC Communications Inc. and BellSouth Corp.; it operates in the State of California under licenses held by Pacific Telesis Mobile Services and is registered as Pacific Bell Wireless.

to him until after his cellular service was cut off on January 27, 2000. Applicant asserts that not only did Cingular One fail to send him an April, 1999 bill before terminating service, but that once service was wrongfully cut off, Cingular One refused to reimburse him for the cost of the phone handset that could only be used with Cingular One service and demanded payment for the activation fee regarding that service. We held an unrecorded hearing on August 7, 2001, in San Francisco. At that hearing, Dr. Martins conceded that he owed Cingular One \$55, which included payment for his April 1999 bill. Applicant agreed to pay this amount and in D.01-10-011 we note this agreement. However, a reading of the Complaint reveals that D.01-10-011 failed to address other issues raised such as whether Dr. Martins should be reimbursed for the cost of the phone handset and the activation fee. There is no evidence that these issues were addressed at the hearing.

“In D.01-10-011, we dealt exclusively with the issues surrounding why the phone service was discontinued. Thus, our Decision did not resolve the other issues in the complaint relating to whether Dr. Martins should be reimbursed for the cost of the phone handset and the activation fee. Since the hearing was unrecorded, it is unclear whether these issues were in fact heard. Consequently, we grant rehearing to determine whether Applicant should be reimburse for his phone handset, activation fee, and any other unresolved issues in the complaint that are appropriate for resolution.” (D.02-08-035, pp. 1-2.)

Public hearing was held April 22, 2003.

At the hearing into the “unresolved issues,” complainant said that he wanted certain findings made:

1. that “there are no termination charges included in [a bill of \$120.50].” (R.T. 2.)

2. that his telephone service was wrongfully terminated. (R.T. 19.)
3. that he did not receive his April 1999 bill until after his service was terminated. (R.T. 9.)
4. that he only owes \$40 for his April 1999 bill. (R.T. 18.)
5. that defendant had bill collectors dunning complainant while the matter was before the Commission. (R.T. 3.)

Complainant admitted that he bought his cellular phone through a retailer, not the defendant. (R.T.5.) He testified that he does not seek an award of reparations from the Commission. (R.T. 9.) He requests sanctions against defendant, not damages. (R.T. 6.)²

Complainant testified his service was terminated January 27, 2000 for nonpayment of his April 1999 bill, which he did not receive until after January 27, 2000. The April bill, in his opinion, was the bill for services April 7 through May 6. He said he called defendant in July, August, and September 1999 requesting his April bill, but he did not receive it until after his service was terminated. The bill was for \$90.27. He admitted receiving bills for June through December and paid them when due. Those bills showed past due charges including a charge for \$90.27 which he did not pay. He testified his May bill was received in October 1999 and paid, but he did not receive his April bill until after his service was terminated. He said that because he did not receive his April 1999 bill prior to termination, it never became past due. He admitted he owes defendant \$40 but it is not past due. He said “it’s my discretion when to pay it.” (R.T. 22.) He said he received six dunning letters from defendant’s bill collectors while this action was pending.

Defendant's witness testified that when a subscriber to wireless service activates service he is charged a month in advance. She said that in May 1999 defendant installed a new billing system, which delayed some customers' bills by at most one month. She said her company refers to its bills by the month when the bill is mailed. A bill mailed in April is the April bill, a bill mailed in May is the May bill, etc. She said complainant called defendant in July 1999 and requested his May bill, which was sent; in August 1999 complainant requested his June bill, which was sent; the same for September 1999. By December 1999, defendant had not received payment for the April and May bills, and the collection process began. The total amount due in December 1999 was \$120.50.

On December 16, 1999 defendant sent complainant a past due notice; on January 7, 2000, a suspension notice; and on January 27, 2000 a notice of termination (or deactivation). For failure to pay the past due amount, complainant's account was suspended on December 28, 1999, and deactivated on January 27, 2000. She testified that defendant used a collection agency to recover complainant's unpaid bill, but in August 2001 she cancelled the collection agency activity.

The issues of this case arose as the result of a failure of communication. Defendant mailed its bills, during the period in question, without indicating the date of mailing on the bill. Defendant's May bill said, for example, "Statement Date: 4/07/99 – 5/6/99." Complainant treated this bill as his April bill, reasoning that most of the activity occurred in April. Defendant treated this bill

² Complainant introduced Exhibit 1 which consists of his prepared testimony and 22 subparts. The subparts comprise various bills for services and letters regarding his account with defendant.

as the May bill because it was mailed shortly after the close of the billing period. Apparently, for some time defendant's personnel interpreted Complainant's requests for a duplicate April bill as requesting the March-April 1999 bill.

Complainant did not receive his April-May 1999 bill when mailed; he received it

after his service was terminated. Nevertheless, it is clear that complainant knew he received service in April-May 1999; knew he had not paid the bill for that period; knew that each bill he received after April-May 1999 showed a balance due; and knew that his service would be terminated if he did not pay a balance that had been carried for eight months.³ Complainant could have prevented termination by depositing the disputed amount of the bill with the Commission prior to termination. This he failed to do.

In short, the record shows that defendant was entitled to terminate complainant's service; thus, complainant's service was not wrongfully terminated. Complainant has failed to establish that any of the bills were incorrect, or that any of the actions defendant took to collect its bills were wrongful. Furthermore, regarding the phone handset and activation fee issues noted in D.02-08-035, complainant has established no basis for relief. Absent a finding of wrongdoing, there is no basis (and no reason) to impose sanctions on defendant. The relief requested by complainant is denied.

³ The April-May 1999 balance was \$90.27. Additional amounts claimed by defendant were apparently late fees and interest.

Appeal of Presiding Officer's Decision (POD)

Following the rehearing in this matter, the Assigned Administrative Law Judge (ALJ), as Presiding Officer, issued his POD on June 18, 2003. Complainant filed a timely appeal on July 18, 2003, and defendant responded in opposition to the appeal.

Complainant argues that the POD is unsupported by the evidence, is contrary to law, and denies consumers due process. Defendant argues that the decision is fully supported by the facts and the law. We have reviewed the POD in light of the record and conclude that every finding of fact is supported by the record. To discuss them further in this section would merely restate that which has been thoroughly analyzed in the POD. Complainant's assertion that the POD is contrary to law is vague, without reference to the record. His assertion that he, and other consumers, are denied due process is belied by this Commission's extensive hearing and appellate practice. Complainant has had two hearings and two appeals.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Robert Barnett is the Assigned ALJ in this proceeding.

Findings of Fact

1. Complainant was a customer of defendant at all times pertinent to this case until his service was terminated on January 27, 2000.
2. A change in defendant's billing system caused the mailing of complainant's bills for service in April and May 1999 to be delayed, but defendant mailed the bills within a month of their usual mailing date.
3. Complainant never received a bill for service for the period April-May 1999 until after January 27, 2000.

4. The bill for April-May 1999 was \$90.27. (Ex. 1, part 10.)
5. Each bill complainant received after June 1999 showed a balance past due of at least \$90.27. (Ex. 1, parts 11-13).
6. Complainant called defendant on at least three occasions seeking a copy of his April-May 1999 bill, but did not receive a copy until after January 27, 2000.
7. Defendant's termination of service procedures were reasonable.
8. Defendant's collection procedures were reasonable.
9. To prevent termination of service, complainant did not avail himself of the opportunity to deposit the disputed amount with the Commission prior to termination.
10. Complainant used the service for which he was billed in April-May 1999, knew he owed for the service, knew the amount defendant billed, and failed to deposit the disputed amount with the Commission prior to termination.

Conclusions of Law

1. Defendant terminated complainant's services in a lawful manner.
2. The appeal by complainant of the POD should be denied.
3. Complainant is not entitled to any relief.
4. Today's order should be made effective immediately.

IT IS ORDERED that:

1. Complainant is not entitled to any relief. The Presiding Officer's Decision is affirmed.
2. The complaint is dismissed, and Case 01-06-040 is closed.

This order is effective today.

Dated September 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners